

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV/](http://www.ca2.uscourts.gov/)). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals
for the Second Circuit, held at the Daniel Patrick Moynihan
United States Courthouse, 500 Pearl Street, in the City of
New York, on the 23rd day of December, two thousand nine.

PRESENT:

RALPH K. WINTER,
PIERRE N. LEVAL,
REENA RAGGI,
Circuit Judges.

NEN MEI LIN, a.k.a. NEN-MEI LIN,
Petitioner,

v.

ERIC H. HOLDER, JR., UNITED STATES
ATTORNEY GENERAL,
Respondent.

09-0815-ag
NAC

FOR PETITIONER: Oleh R. Tustaniwsky, Hualian Law
Offices, New York, New York.

FOR RESPONDENT: Tony West, Assistant Attorney
General; James Grimes, Senior
Litigation Counsel; Elizabeth Young,
Trial Attorney, Office of Immigration

**Litigation, United States Department
of Justice, Washington, D.C.**

UPON DUE CONSIDERATION of this petition for review of a Board of Immigration Appeals ("BIA") decision, it is hereby ORDERED, ADJUDGED, AND DECREED, that the petition for review is DENIED.

Petitioner Nen Mei Lin, a native and citizen of the People's Republic of China, seeks review of the January 30, 2009 order of the BIA denying her motion to reopen. *In re Nen Mei Lin*, No. A095 716 374 (B.I.A. Jan. 30, 2009). We assume the parties' familiarity with the underlying facts and procedural history of the case.

We review the BIA's denial of a motion to reopen for abuse of discretion, *Ali v. Gonzales*, 448 F.3d 515, 517 (2d Cir. 2006), mindful of "the Supreme Court's admonition that motions to reopen are disfavored," *Maghradze v. Gonzales*, 462 F.3d 150, 154 (2d Cir. 2006) (citing *INS v. Abudu*, 485 U.S. 94, 107 (1988) ("There is a strong public interest in bringing litigation to a close as promptly as is consistent with the interest in giving the adversaries a fair opportunity to develop and present their respective cases.")); see also *INS v. Doherty*, 502 U.S. 314, 323 (1992). When the BIA evaluates country conditions evidence submitted with a motion to reopen, we review its findings

1 for substantial evidence. See *Jian Hui Shao v. Mukasey*, 546
2 F.3d 138, 169 (2d Cir. 2008). Here, the BIA did not abuse
3 its discretion in denying Lin's motion to reopen based on
4 her failure to establish *prima facie* eligibility for relief.
5 See *Abudu*, 485 U.S. at 104.

6 The BIA reasonably concluded that, notwithstanding her
7 membership in the China Democracy Party ("CDP") in the
8 United States, Lin failed to show that the Chinese
9 government would single her out for persecution upon her
10 return to China, or that the Chinese government has a
11 pattern or practice of persecuting overseas members of the
12 CDP who return to China. See *Hongsheng Leng v. Mukasey*, 528
13 F.3d 135, 143 (2d Cir. 2008). The BIA also reasonably
14 concluded that the evidence in the record did not describe
15 the persecution or torture of individuals similarly situated
16 to Lin. See *Jian Xing Huang v. INS*, 421 F.3d 125, 128 (2d
17 Cir. 2005). Contrary to Lin's argument, the BIA analyzed
18 the most significant pieces of evidence in the record, and
19 adequately indicated the basis for its decision. See *Wei*
20 *Guang Wang v. BIA*, 437 F.3d 270, 275 (2d Cir. 2006) (holding
21 that where the BIA "has given reasoned consideration to the
22 petition, and made adequate findings," it need not
23 "expressly parse or refute on the record each individual
24 argument or piece of evidence") (internal quotation marks

1 and citations omitted).

2 To the extent Lin urges the Court to remand her case to
3 the BIA to address her July 2007 motion to remand, that
4 argument is not properly before us. The proper mechanism
5 for such an argument would have been a petition for review
6 of the BIA's July 2008 order, a step Lin failed to take.
7 See *Ke Zhen Zhao v. U.S. Dep't of Justice*, 265 F.3d 83, 89,
8 90 (2d Cir. 2001) (providing that where an alien timely
9 petitions for review from the denial of a motion to reopen,
10 but not from the underlying affirmance of another decision,
11 this Court may review only the denial of the motion).

12 For the foregoing reasons, the petition for review is
13 DENIED. As we have completed our review, any stay of
14 removal that the Court previously granted in this petition
15 is VACATED, and any pending motion for a stay of removal in
16 this petition is DISMISSED as moot. Any pending request for
17 oral argument in this petition is DENIED in accordance with
18 Federal Rule of Appellate Procedure 34(a)(2), and Second
19 Circuit Local Rule 34(b).

20 FOR THE COURT:
21 Catherine O'Hagan Wolfe, Clerk
22
23

24 By: _____